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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 BRADLEY SHACKFORD,) NO. SACV 09-01398 SS
12 Plaintiff,)
13 v.) MEMORANDUM DECISION AND ORDER
14 MICHAEL J. ASTRUE,)
15 Commissioner of the Social)
16 Security Administration,)
17 Defendant.)
18 _____)

19 I.
20 INTRODUCTION

21 Bradley Shackford ("Plaintiff") brings this action seeking to
22 overturn the decision of the Commissioner of the Social Security
23 Administration (hereinafter the "Commissioner" or the "Agency") denying
24 his application for Disability Insurance Benefits ("DIB"). The parties
25 consented, pursuant to 28 U.S.C. § 636(c), to the jurisdiction of the
26 undersigned United States Magistrate Judge. For the reasons stated
27 below, the decision of the Commissioner is AFFIRMED.

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1 September 16, 2009, the ALJ issued an unfavorable decision. (AR 494-
2 505). Thus, Plaintiff commenced the present action on November 25,
3 2009. (Memorandum in Support of Defendant's Answer ("Answer Memo") at
4 2).

6 III.

7 FACTUAL BACKGROUND

8
9 Plaintiff was born on May 14, 1963 and was forty-seven years of age
10 at the time of the hearing. (Memorandum in Support of Plaintiff's
11 Complaint ("Complaint Memo") at 1). He has a high school diploma and
12 completed some college courses. (AR 470). Plaintiff has previous work
13 experience in installing sprinkler systems, landscaping, and managing
14 rental properties. (AR 470, 475). Plaintiff alleges that his
15 disability began on September 21, 2001. (AR 11). Plaintiff has not
16 engaged in substantial gainful activity since his alleged onset of
17 disability. (AR 13).

18
19 Plaintiff has a history of methamphetamine abuse (See, e.g., AR
20 365, 413, 440, 533), was arrested for attempting to sell amphetamines
21 and has a DUI conviction. (AR 533). Plaintiff also has some history
22 of psychiatric treatment and psychotherapy for depression. (AR 363,
23 540). Plaintiff was diagnosed as HIV positive on May 16, 1984. (AR
24 473).

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28 In response to the previous remand order, instructing the ALJ to
take VE testimony in light of the non-physical limitations, (AR 533) the

1 Agency arranged for a cognitive evaluation of Plaintiff. (AR 1116).
2 Although the results suggested that Plaintiff may be in the "mildly
3 mental[ly] retarded range," Dr. Krieg, who performed the evaluation
4 questioned the validity of the result, stating that Plaintiff was
5 "oppositional to the examiner" and "did not appear to be putting forth
6 his best effort." (AR 1116, 1120). According to Dr. Krieg, "it is
7 conceivable that his performance could be higher." (AR 1121).

8
9 **IV.**

10 **THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS**
11

12 To qualify for disability benefits, a claimant must demonstrate
13 a medically determinable physical or mental impairment that prevents him
14 from engaging in substantial gainful activity¹ and that is expected to
15 result in death or to last for a continuous period of at least twelve
16 months. Reddick v. Chater, 157 F.3d 715, 721 (9th Cir. 1998) (citing
17 42 U.S.C. § 423(d)(1)(A)). The impairment must render the claimant
18 incapable of performing the work he previously performed and incapable
19 of performing any other substantial gainful employment that exists in
20 the national economy. Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir.
21 1999) (citing 42 U.S.C. § 423(d)(2)(A)).
22

23 To decide if a claimant is entitled to benefits, an ALJ conducts
24 a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The steps are as
25 follows:
26

27 ¹ Substantial gainful activity means work that involves doing
28 significant and productive physical or mental duties and is done for pay
or profit. 20 C.F.R. §§ 404.1510, 416.910.

1 (1) Is the claimant presently engaged in substantial gainful
2 activity? If so, the claimant is found not disabled.
3 If not, proceed to step two.
4

5 (2) Is the claimant's impairment severe? If not, the
6 claimant is found not disabled. If so, proceed to step
7 three.
8

9 (3) Does the claimant's impairment meet or equal one of a
10 list of specific impairments described in 20 C.F.R. Part
11 404, Subpart P, Appendix 1? If so, the claimant is
12 found disabled. If not, proceed to step four.
13

14 (4) Is the claimant capable of performing her past work? If
15 so, the claimant is found not disabled. If not, proceed
16 to step five.
17

18 (5) Is the claimant able to do any other work? If not, the
19 claimant is found disabled. If so, the claimant is
20 found not disabled.
21

22 Tackett, 180 F.3d at 1098-99; see also 20 C.F.R. §§ 404.1520(b)-(g)(1),
23 416.920(b)-(g)(1); Bustamante v. Massanari, 262 F.3d 949, 953-54 (9th
24 Cir. 2001) (citations omitted).
25

26 The claimant has the burden of proof at steps one through four, and
27 the Commissioner has the burden of proof at step five. Bustamante, 262
28 F.3d at 953-54. If, at step four, the claimant meets his burden of

1 establishing an inability to perform past work, the Commissioner must
 2 show that the claimant can perform some other work that exists in
 3 "significant numbers" in the national economy, taking into account the
 4 claimant's residual functional capacity ("RFC"),² age, education, and
 5 work experience. Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at
 6 721; 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). The Commissioner may
 7 do so by the testimony of a VE or by reference to the Medical-Vocational
 8 Guidelines appearing in 20 C.F.R. Part 404, Subpart P, Appendix 2
 9 (commonly known as "the Grids"). Osenbrock v. Apfel, 240 F.3d 1157,
 10 1162 (9th Cir. 2001). When a claimant has both exertional (strength-
 11 related) and nonexertional limitations, the Grids are inapplicable and
 12 the ALJ must take the testimony of a VE. Moore v. Apfel, 216 F.3d 864,
 13 869 (9th Cir. 2000).

14 15 V.

16 THE ALJ'S DECISION

17
 18 The ALJ employed the five-step sequential evaluation process and
 19 concluded that Plaintiff was not disabled within the meaning of the
 20 Social Security Act. (AR 499). At the first step, the ALJ observed
 21 that Plaintiff had not engaged in substantial gainful activity at any
 22 time relevant to his decision. (Id.). Next, he found that Plaintiff
 23 had the following severe impairments: HIV positive, with depression
 24 resulting from this condition, a personality disorder, and intermittent
 25

26 ² Residual functional capacity is "the most [one] can still do
 27 despite [one's] limitations" and represents an assessment "based on all
 28 the relevant evidence in [one's] case record." 20 C.F.R. §§
 404.1545(a), 416.945(a).

1 substance abuse. (Id.). At the third step, the ALJ found that the
2 severe impairments at step two did not meet or medically equal a listed
3 impairment. (Id.).
4

5 At step four, the ALJ found that Plaintiff retains the functional
6 capacity to perform medium work.³ (AR 500). The ALJ specifically found
7 that Plaintiff could perform moderately complex tasks of 4 to 5 steps
8 in a habituated environment but is precluded from "working around
9 hazardous machinery because of his history of amphetamine abuse."
10 (Id.). The ALJ found that Plaintiff's HIV positive status did not
11 physically prevent him from working because his medical history showed
12 that he had no abnormalities apart from two papular lesions on the right
13 forearm "most likely secondary to flea bites." (AR 501).
14

15 In regards to Plaintiff's alleged mental impairments, the ALJ found
16 the Plaintiff's complaints "not entirely credible." (AR 503). The ALJ
17 highlighted that Plaintiff has "consistently misrepresented his
18 substance abuse." (Id.). The ALJ found that Plaintiff's testimony as
19 to his last use of drugs or alcohol was "vague and general, lacking the
20 specificity to make it more convincing." (Id.). His apparent lack of
21 effort at the consultative cognitive examination detracted from his
22 credibility, and his care of an elderly woman suggested to the ALJ that
23 his activities "are not as limited as would be expected." (Id.).
24

25
26 ³ Medium work, as defined in 20 C.F.R. 404.1567(c) and 416.967(c),
27 permits lifting and carrying 50 pounds occasionally and 25 pounds
28 frequently, standing and walking with normal breaks for 6 hours out of
an 8 hour day, and sitting with normal breaks for 6 hours out of an 8
hour day.

1 The ALJ credited Dr. Krieg's opinion that if Plaintiff exerted
2 effort, he would be able to understand clear instructions, follow simple
3 directions, complete tasks, and maintain regular attendance in the
4 workplace. (AR 502). The ALJ also gave great weight to the opinion of
5 Dr. Malancharuvil, a medical expert, because the doctor had the
6 opportunity to review the entire record and heard the testimony of
7 Plaintiff at the hearing. (AR 503). The ALJ found the marked
8 limitations in areas of key mental functioning found by Dr. Luce,
9 plaintiff's treating physician, were unsupported and inconsistent with
10 the record. (AR 502). Further, the ALJ found the Dr. Luce ignored or
11 placed minimal emphasis on the impact of Plaintiff's drug use on his
12 mental functioning, and therefore gave Dr. Luce's statement less weight.
13 (Id.).
14

15 Finally, at step five, the ALJ concluded that, Plaintiff could not
16 perform his past relevant work. (AR 503). However, based on
17 Plaintiff's RFC, the testimony of the VE, Plaintiff's status as a
18 "younger individual," education, and work experience; Plaintiff could
19 perform work as a laundry worker, kitchen helper, packager, and
20 inspector. (AR 504). Accordingly, the ALJ found that Plaintiff was not
21 disabled, as defined in the Social Security Act, at any time through the
22 date of the decision. (AR 505).
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25 VI.

26 STANDARD OF REVIEW

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1 Under 42 U.S.C. § 405(g), a district court may review the
2 Commissioner's decision to deny benefits. The court may set aside the
3 Commissioner's decision when the ALJ's findings are based on legal error
4 or are not supported by substantial evidence in the record as a whole.
5 Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001); Smolen v.
6 Chater, 80 F.3d 1273, 1279 (9th Cir. 1996).

7
8 "Substantial evidence is more than a scintilla, but less than a
9 preponderance." Reddick, 157 F.3d at 720. It is "relevant evidence
10 which a reasonable person might accept as adequate to support a
11 conclusion." Id. To determine whether substantial evidence supports
12 a finding, the court must "'consider the record as a whole, weighing
13 both evidence that supports and evidence that detracts from the
14 [Commissioner's] conclusion.'" Aukland, 257 F.3d at 1035 (quoting Penny
15 v. Sullivan, 2 F.3d 953, 956 (9th Cir. 1993)). If the evidence can
16 reasonably support either affirming or reversing that conclusion, the
17 court may not substitute its judgment for that of the Commissioner.
18 Reddick, 157 F.3d at 720-21.

19 20 VII.

21 DISCUSSION

22
23 Plaintiff contends the ALJ erred for a number of reasons. First,
24 he claims that the ALJ erred in failing to fully and fairly develop the
25 record. (Complaint Memo at 2). Second, Plaintiff contends that the ALJ
26 improperly rejected the opinions of Plaintiff's treating physician, Dr.
27 Luce, concerning Plaintiff's mental capabilities. (Complaint Memo at 4).
28 Finally, Plaintiff contends that the ALJ erred in failing to discuss the

1 findings of Ms. Poulalion, a family therapist. (Complaint Memo at 7).
2 For the reasons discussed below, the Court disagrees with all of
3 Plaintiff's contentions.

4
5 **A. The ALJ Fully And Fairly Developed The Record**

6
7 Plaintiff contends that ALJ failed to fully and fairly develop the
8 record by not ordering an updated psychological examination "as
9 recommended by the medical expert," Dr. Malancharuvil. (Complaint Memo
10 at 2). This Court disagrees.

11
12 The ALJ has an independent duty to develop the record, even when
13 the claimant is represented by counsel. Tonapetyan v. Halter, 242 F.3d
14 1144, 1150 (9th Cir. 2001) (citing Smolen, 80 F.3d at 1288); Crane v.
15 Shalala, 76 F.3d 251, 255 (9th Cir. 1996) (citing Brown v. Heckler, 713
16 F.2d 441, 443 (9th Cir. 1983)). However, it is the plaintiff's duty to
17 prove that she is disabled. Mayes v. Massanari, 276 F.2d 453, 458 (9th
18 Cir. 2001) (citing 42 U.S.C. § 423(d)(5) (Supp. 2001) and Clem v.
19 Sullivan, 894 F.2d 328, 330 (9th Cir. 1990)). As noted in Mayes, an
20 ALJ's duty to develop the record further is triggered only when there
21 is ambiguous evidence or when the record is inadequate to allow for
22 proper evaluation of the evidence. Mayes, 276 F.3d at 459 (citing
23 Tonapetyan, 242 F.3d at 1150). Here, the ALJ's duty was not triggered,
24 because the record was not ambiguous or inadequate.

25 \\

26 Following remand, the agency arranged for a consultative
27 examination of Plaintiff. Although Plaintiff appeared at the
28 consultative examination, he refused to fully cooperate. During the

1 hearing the medical expert, Dr. Malancharuvil, said that he was not able
2 to determine Plaintiff's true level of cognitive impairment based off
3 of the cognitive examination because Plaintiff was uncooperative with
4 Dr. Krieg, who performed the consultative cognitive examination. (AR
5 542). Dr. Malancharuvil then stated that "my recommendation to
6 [Plaintiff] is [that] he goes to a psychologist and cooperates fully and
7 gets [] testing of []his cognitive functions." (AR 542). Dr. Kreig had
8 previously stated that "if he is not putting forth his best effort, it
9 is conceivable that his performance could be higher," and noted that
10 Plaintiff was "oppositional with the examiner" and only "minimally to
11 moderately cooperative." (AR 1116, 1121). Dr. Malancharuvil concurred
12 with Dr. Krieg's findings that the test was not valid and stated that
13 "as the record stands now" his opinion is that Plaintiff is capable of
14 performing "moderately complex tasks in a habituated setting." (AR 532-
15 33). Dr. Malancharuvil states that there is "an outside opinion of what
16 is subjectively verifiable here" and that based on the record, he "can't
17 change his opinion." (AR 542).

18
19 Not only was any potential ambiguity in the record caused by
20 Plaintiff's own failure to comply with the consultative examiner, but
21 there was no actual ambiguity of the kind that would require further
22 development of the record. The Agency had ordered physical and
23 cognitive examinations. (AR 1112, 1116). The ALJ had both a medical
24 expert and a VE both testify at the hearing. (AR 529). Dr.
25 Malancharuvil's statement that Plaintiff should obtain another cognitive
26 assessment was a recommendation to Plaintiff, not to the ALJ. (AR 542)
27 ("[M]y recommendation to him is that") (emphasis added). Thus,
28 this statement does not indicate that Dr. Malancharuvil found the record

1 incomplete, but rather that Plaintiff would need a valid test showing
2 cognitive impairment in order to "change [his] opinion." (AR 542-43).
3

4 The Court notes that Plaintiff's failure to cooperate may be held
5 against him in the disability determination. Social Security
6 regulations state that if a claimant does not have a "good reason" for
7 failing or refusing to take part in consultative examinations or tests
8 arranged by the ALJ, or fails to cooperate with the process, then the
9 ALJ may make a negative disability determination based solely on this
10 failure to take part. 20 C.F.R. § 404.1594(e)(2); 20 C.F.R. §
11 416.918(a) ("If you are applying for benefits and do not have a good
12 reason for failing or refusing to take part in a consultative
13 examination or test which we arrange for you to get information we need
14 to determine your disability or blindness, we may find that you are not
15 disabled."); see also Kreidler v. Barnhart, 385 F. Supp. 2d 1034, 1037
16 (C.D. Cal. 2005) (failure to attend an examination is equivalent to a
17 failure to cooperate, which is sufficient to warrant termination of
18 disability benefits). The ALJ must consider the claimant's physical,
19 mental, educational and linguistic limitations in determining whether
20 the claimant had a good reason for failing to cooperate with a
21 consultative examination. 20 C.F.R. §§ 404.1518(a); 416.918(a). See
22 Higbee v. Sullivan, 975 F.2d 558, 562 (9th Cir. 1992). However, in the
23 absence of a good excuse for non-cooperation, the claimant may be
24 disqualified. 20 C.F.R. § 404.1594(e)(2). Although the nondisability
25 determination discussed above usually follows a claimant's complete
26 failure to attend an examination, the underlying rationale is applicable
27 here -- i.e., a claimant should not be entitled to further examination
28

1 if he fails to fully cooperate in the first examination. At a minimum,
2 Plaintiff has a duty to fully cooperate with consultative examinations.
3

4 Based on Dr. Malanchrauvil's testimony and the remainder of the
5 record, the ALJ correctly decided that the record was not incomplete or
6 ambiguous. Thus, there was no duty to further develop the record.
7

8 **B. The ALJ Properly Rejected The Treating Physician's Opinion**
9

10 Plaintiff also contends that the ALJ erroneously rejected the
11 opinion of the treating physician. (Complaint Memo at 4).
12 Specifically, Plaintiff claims that the ALJ erred in failing to
13 recontact Dr. Luce, Plaintiff's treating physician, for clarification
14 of her assessment and for failing to provide specific and legitimate
15 reasons for rejecting Dr. Luce's opinion. (Id. at 6-7). This Court
16 disagrees.
17

18 As a general rule, more weight is usually afforded to the opinion
19 of a treating physician than to doctors who do not treat the claimant.
20 Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). However, such
21 deference is not absolute and may be discounted where it is not
22 supported by objective evidence. Morgan v. Apfel, 169 F.3d 595, 600
23 (9th Cir. 1999). When the treating physician's opinion is contradicted
24 by the opinion of another doctor, the ALJ may properly reject the
25 treating doctor's opinion by providing "'specific and legitimate
26 reasons' which are supported by substantial evidence in the record."
27 Lester, 81 F.3d at 830 (citing Murray v. Heckler, 722 F.2d 499, 502 (9th
28 Cir. 1983)). A consultative medical examiner's findings can constitute

1 substantial evidence if it rests on independent clinical findings.
2 Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001). Furthermore,
3 "[t]he ALJ is responsible for determining credibility, resolving
4 conflicts in the medical testimony, and for resolving ambiguities."
5 Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995).

6
7 Plaintiff's treating physician, Dr. Luce, performed a mental status
8 examination on Plaintiff and found Plaintiff had marked limitations in
9 "key areas of mental function" and "poor ability to complete most
10 activities." (AR 502, 1120). The ALJ rejected this opinion because
11 "there is nothing in the clinical progress notes to support the presence
12 of a mental impairment to the degree reported by Dr. Luce." (AR 502).
13 A lack of objective evidence is a specific and legitimate reason to
14 reject a treating doctor's opinion. Magallanes v. Bowen, 881 F.2d 747,
15 754 (9th Cir. 1989). Dr. Luce's opinion was contradicted by that of Dr.
16 Krieg and Dr. Malancharuvil, who both found that Plaintiff could perform
17 moderately complicated tasks. (AR 532). Dr. Krieg and Dr.
18 Malancharuvil's formed their opinions based on independent, objective
19 clinical findings. (See AR 1116-20). Dr. Krieg and Dr. Malancharuvil's
20 opinions qualify specific and legitimate reasons supported by the record
21 for rejecting Dr. Luce's opinion. The reports of consultative
22 physicians may serve as substantial evidence if they are supported by
23 other evidence in the record. Tonapetyan v. Halter, 242 F.3d 1144, 1149
24 (9th Cir. 2001).

25
26 As stated previously, an ALJ's duty to develop the record further
27 is triggered only when there is ambiguous evidence or when the record
28 is inadequate to allow for proper evaluation of the evidence. Mayes,

1 276 F.3d at 459. The ALJ's finding that Dr. Luce's opinion was
2 unsupported did not suggest that the record was ambiguous or inadequate
3 as there was sufficient evidence in the record to allow for a proper
4 evaluation of Plaintiff's limitations. Indeed, the ALJ sought the
5 assistance of Dr. Lunianski, a medical expert, to review the medical
6 records and to provide an assessment of Plaintiff's limitations. (AR
7 502). Dr. Lunianski found the record complete and found that Dr. Luce's
8 opinion was inconsistent with the rest of the record and unsupported by
9 objective findings. (AR 455). Thus, we cannot find that the ALJ erred
10 in failing to recontact Dr. Luce to obtain clarification.

11
12 Here, the ALJ properly resolved the conflict between Dr. Luce and
13 the other medical experts and found Dr. Luce's opinion should be given
14 less weight. Because the ALJ had specific and legitimate reasons for
15 rejecting Dr. Luce's opinion, he did not err by giving it less weight.
16 See Tonapetyan, 242 F.3d at 1149. No remand is required.

17
18 **C. The ALJ Did Not Err In Failing To Discuss The Opinion Of Ms.**
19 **Poulalion**

20
21 Plaintiff also contends that the ALJ improperly ignored the mental
22 assessment of Ms. Poulalion, a non-physician Family Therapist.
23 (Complaint Memo at 7). Plaintiff claims Ms. Poulalion's findings
24 substantiate the memory and concentration problems claimed by Plaintiff,
25 and therefore, by failing to discuss her findings, the ALJ committed
26 reversible error. (Id.). This Court disagrees.

1 An ALJ "need not discuss all evidence presented," but rather must
2 explain why significant probative evidence has been rejected. Vincent
3 v. Heckler, 739 F.2d 1393, 1394-95 (9th Cir. 1984). Under Social
4 Security regulations, a therapist is not an acceptable medical source,
5 20 C.F.R. § 404.1513(a); however, an ALJ must consider such evidence,
6 at a minimum, as qualified evidence or lay testimony. 20 C.F.R. §
7 416.913(d)(3); see also Gomez v. Chater, 74 F.3d 967, 970-1 (9th Cir.
8 1996). Therefore, although the opinions of non-physician "other medical
9 sources" such as therapists, cannot be used to establish the existence
10 of a condition, they may be relevant to the severity of the condition.
11 See 20 C.F.R. § 416.913(d)(1). The ALJ may discount the testimony of
12 non-physician witnesses only if he gives "reasons that are germane to
13 each witness." Dodrill v. Shalala, 12 F.3d 915, 919 (9th Cir. 1993).
14 In cases in which "the ALJ's error lies in a failure to properly discuss
15 competent lay testimony favorable to the claimant, a reviewing court
16 cannot consider the error harmless unless it can confidently conclude
17 that no reasonable ALJ, when fully crediting the testimony, could have
18 reached a different disability determination." Robbins v. Social
19 Security Administration, 466 F.3d 880, 885 (9th Cir. 2006). If the
20 ALJ's ultimate credibility determination and reasoning are adequately
21 supported by substantial evidence in the record, no remand is required.
22 Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d 1190, 1195-97 (9th Cir.
23 2004).

24
25 Ms. Poulalion, a Marriage and Family therapist that Plaintiff saw
26 in connection with his HIV status, noted in an "Initial Psychosocial
27 Assessment" that Plaintiff's "[t]houghts are slow and pressured" and
28 that he exhibited "poor memory, [and] poor concentration." (AR 1049).

1 However, this initial assessment consists almost entirely of Plaintiff's
2 subjective reporting, as is noted at the top of the assessment with the
3 instructions that the therapist "us[e] ct's own words." (AR 1047).
4 Additionally, this assessment is primarily concerned with the gathering
5 of background information about Plaintiff, such as his family history,
6 social support, religious beliefs, and past psychiatric history. (AR
7 1047-49). These factors indicate the low probative value of this
8 assessment. See Howard ex rel. Wolff v. Barnhart, 341 F.3d 1006, 1012
9 (9th Cir. 2003).

10
11 Furthermore, even if the ALJ did err by not providing specific
12 reasons for rejecting Ms. Poulalion's statements, any error was
13 harmless. The opinions of Dr. Krieg and Dr. Malancharuvil rest on
14 independent, objective clinical findings, and contradict the statements
15 made by Ms. Poulalion. (See AR 1116-20). Therefore these opinions would
16 provide substantial evidence for rejecting Ms. Poulalion's opinion.
17 Tonapetyan, 242 F.3d at 1149). Because the ALJ previously found
18 Plaintiff not credible based on his long history of drug abuse, (AR 503)
19 the ALJ could have properly rejected Ms. Poulalion's assessments because
20 she based her assessments entirely on Plaintiff's subjective complaints.
21 Fair v. Bowen, 885 F.2d 597, 605 (9th Cir. 1989) (having discounted
22 plaintiff's credibility, ALJ properly discredited treating physician's
23 opinion based on plaintiff's subjective symptoms).

24 Therefore, the ALJ did not error in failing to discuss the opinion
25 of Ms. Poulalion because it was not "probative evidence." Vincent, 739
26 F.2d at 1394-95. However, even if her opinion were probative, the ALJ
27 could have properly rejected Ms. Poulalion's observations for being
28 against the weight of the record, in contradiction to objective findings

1 by medical experts, and for being based on Plaintiff's subjectively
2 reported symptoms. Based on these reasons, it is highly unlikely that
3 a "reasonable ALJ, when fully crediting the testimony, could have
4 reached a different disability determination." Robbins, 466 F.3d at
5 885. Therefore, the ALJ's ultimate credibility determination and
6 reasoning are adequately supported by substantial evidence in the
7 record, and no remand is required for any error in failure to discuss
8 Ms. Poulalion's findings.

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26 **VIII.**
27 **CONCLUSION**
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1 Consistent with the foregoing, and pursuant to sentence four of 42
2 U.S.C. § 405(g),⁴ IT IS ORDERED that judgment be entered AFFIRMING the
3 decision of the Commissioner and dismissing this action with prejudice.
4 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this
5 Order and the Judgment on counsel for both parties.

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7 DATED: August 6, 2010.

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10 /S/
SUZANNE H. SEGAL
UNITED STATES MAGISTRATE JUDGE
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27 ⁴ This sentence provides: "The [district] court shall have power
28 to enter, upon the pleadings and transcript of the record, a judgment
affirming, modifying, or reversing the decision of the Commissioner of
Social Security, with or without remanding the cause for a rehearing."